

CRIM. NO.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRED PATRICK MEYERS,

Defendant and Appellant,

vs.

UNITED STATES OF AMERICA,

Plaintiff and Appellee.

Appeal from the United States District Court
For the Southern District of California
HON. JESSE W. CURTIS, Judge

APPELLANT'S OPENING BRIEF

FILED

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20
21 JURISDICTION

22 This is an appeal from the judgment of the United
23 States District Court, for the Southern District of Califor-
24 nia, adjudging Appellant guilty of the violation of Title
25 21 U. S. Code, Sec. 174 in three counts of a five count
26 indictment following a trial by the Court without a jury.

1 The District Court had jurisdiction by virtue of
2 Title 21 Sec. 174 U.S.C.A. The jurisdiction of this Court
3 rests pursuant to Title 28 U.S.C., Secs. 1291 and 1294.
4

5 STATEMENT OF THE RECORD

6 On December 22, 1966 the appellant Fred Patrick
7 Meyers, together with Lois Ellen Blalock, were charged in an
8 indictment containing five counts. Appellant Meyers was
9 charged in Count One on September 22, 1966 with violation of
10 Sec. 21,174 (unlawfully receiving and concealing the trans-
11 portation of heroin), Count Two with violation of Sec. 21,174
12 (the sale of said heroin), Count Three on October 3, 1966,
13 together with co-defendant Blalock, with violation of Sec.
14 21,174 (selling a narcotic), Count Four on October 3, 1966
15 with violation of Sec. 21,174 (receiving and concealing the
16 same drug), and Count Five on October 15, 1966 with violation
17 of Sec. 21,176 (receiving and facilitating the transportation
18 of marijuana). (Cl. Tr. 1 to 6).

19 On January 5, 1967, the Court, being informed that
20 there is reasonable cause to believe that the defendant
21 and appellant was insane or otherwise mentally incompetent,
22 appointed Dr. Edwin McNeil, Dr. Frederick Wetzel and Dr.
23 Patrick J. Lovelle to examine defendant Meyers with specific
24 instructions to report to the Court concerning the sanity
25 of said defendant on the date of said examination and whether
26 the said defendant was presently under the influence of



1 narcotics and to render their report in writing to said Court
2 with copies thereof to defendant Meyers' counsel.

3 The defendant Meyers was thereupon committed to the
4 custody of the United States Marshal for the purpose of
5 conducting such examination (Cl. Tr. 7 to 10).

6 On January 31, 1967 a waiver of trial by jury and
7 special findings of fact were duly filed (Cl. Tr. p. 11).

8 On the same date defendant Meyers was arraigned and
9 entered a plea of not guilty (Cl. Tr. 12, 13). On February
10 8, 1967 the cause was called for trial before the Honorable
11 Jesse W. Curtis, District Judge.

12 At the close of the Government's case a motion for
13 judgment of acquittal was denied, which motion was renewed
14 at the close of the defendant Meyers' case and likewise
15 denied and again motion at the submission of the cause, and
16 denied. The defendant Meyers was found guilty on Counts
17 One, Two and Three, referred to the Probation Department
18 and continued to March 6, 1967.

19 On February 17, 1967 motion for new trial was filed
20 on behalf of defendant Meyers (Cl. Tr. p. 25) and on Feb-
21 ruary 20, 1967 the notice of motion was filed (Cl. Tr. 28).

22 On March 6, 1967 the cause was continued to March
23 20, 1967 (Cl. Tr. p. 30). On March 6, 1967 an information
24 charging a prior conviction was filed by the United States
25 Attorney (Cl. Tr. pp 31-32). The prior conviction charged
26 that on the 26th day of April, 1965 defendant Meyers was con-



1 victed of a violation of Title 26 Sec. 4724(a), the impor-
2 tation of narcotics without payment of taxes, and was
3 sentenced by the court for a period of three years, execu-
4 tion of the sentence being suspended and the defendant
5 placed on probation for a period of three years on certain
6 conditions, namely, that he not use barbiturates, marijuana
7 or narcotics in any form, nor associate with users, nor
8 approach the Mexican Border, nor enter Mexico, and to
9 submit to Naline tests as the Probation Departmenty may
10 require (Cl. Tr. pp. 31-32).

11 On March 20, 1967, the respective motions and
12 cause were continued to March 27, 1967, (Cl. Tr. p. 35),
13 thence to April 10, 1967 (Cl. Tr. p. 37) at which time the
14 defendant Meyers was sentenced to a period of ten years
15 each on Counts One, Two and Three of the Indictment to run
16 concurrently, the judgment and commitment providing that

17 "the Court recommends commitment to
18 a United States Public Health Hos-
19 pital facility where the defendant
20 can receive treatment for possible
21 narcotic addiction"(Cl. Tr. p. 38).

22
23 STATEMENT OF FACTS

24 Larry Brittenham,* a witness called on behalf of the
25

26 * This witness Brittenham will be referred hereafter as "B".



1 Government testified that on September 22, 1966 about 6:00
2 or 7:00 p.m. he made a 'phone call to Henry Freeman to pick
3 up an ounce of heroin. An objection as hearsay was made to
4 this testimony, which was overruled by the Court (Rp. Tr. p.
5 6). About 6:00 p.m. on that date another call was made to
6 Henry Freeman "to find out where to meet Fred Meyers for
7 the -- an ounce of heroin for three hundred --". A further
8 objection was made on the grounds of hearsay which was
9 denied by the Court (Rp. Tr. p. 7). About 6:00 p.m. on the
10 same date he made a 'phone call to defendant Fred Meyers
11 and met him at approximately 8:00 p.m. at the corner of
12 Balboa and Saticoy, together with Agent Westrate. Prior to
13 arriving at this location Agent Westrate searched the witness
14 and his automobile (Rp. Tr. p. 8).

15 About 8:00 p.m. defendant Meyers arrived with a
16 "girl" (Rp. Tr. p. 9). The agent and witness alighted from
17 their automobile and proceeded to the rear of the Meyers'
18 car. A conversation ensued at the rear of the Meyers'
19 vehicle. In the conversation Meyers stated the heat was on
20 pretty bad in Pacoima and when asked if he had any junk re-
21 plied "Yes, I have an ounce". The witness asked if he
22 (Meyers) was willing to bring the narcotic to them but he
23 (Meyers) said he wouldn't do it that way, that he had it
24 "stashed a couple of blocks from here" (Rp. Tr. p. 10).
25 He would take the witness to a location but would not permit
26 the agent to go along as he trusted nobody. The witness



1 then entered into Meyers' car (Rp. Tr. p. 11) and they pro-
2 ceeded in a circuitous route and at different signals the
3 defendant would catch a signal before it turned red so that
4 any other car that might be following them could not come
5 on through (Rp. Tr. p. 12). Arriving at Napa Street Meyers
6 and the witness alighted from the car and proceeded across
7 the street into an open field and there Meyers leaned over,
8 picked up a prophylactic and placed it back (Rp. Tr. p. 13).
9 Meyers instructed the witness not to bring any other person
10 with him if he desired any more narcotics (Rp. Tr. p. 14).

11 On the return to Balboa and Saticoy Westrate counted
12 out some money (Rp. Tr. 15). Thereupon the witness and
13 Westrate proceeded to Napa Street and the agent picked up the
14 prophylactic and returned it to the automobile (Rp. Tr. p. 15).
15 The witness and his automobile were again searched and they
16 proceeded to the Federal Building where the witness "turned in
17 a statement" (Rp. Tr. pp. 16-17).

18 On October 3, 1966 at about 6:00 p.m. the witness
19 made a telephone call from a 'phone booth monitored by Agent
20 Westrate to defendant Meyers (Rp. Tr. p. 17). In the conver-
21 sation the defendant instructed the witness to meet him at
22 Laurel Canyon and Van Nuys Boulevard, that he would give him
23 forty grams for five hundred. Agent Westrate was again
24 present at this transaction (Rp. Tr. p. 18). Agent Westrate
25 searched the witness before proceeding to the location.
26 After a second 'phone call to the defendant he arrived at the



1 location and instructed the witness to follow him in his car
2 without Agent Westrate. The witness followed for a dis-
3 tance of a few blocks, both cars came to a stop at a dead-
4 end street and both persons alighted from the automobiles
5 and proceeded across the street to a tan colored automobile
6 parked in the rear, which was occupied by the same girl
7 who was in the Meyers' car in the first transaction. The
8 witness gave the defendant Meyers the money which in turn
9 was given to the girl and she delivered 40 grams contained
10 in a prophylactic to the witness (Rp. Tr. p. 21). The
11 witness thereupon returned to his car and drove to the place
12 where Agent Westrate was parked and the narcotic was then
13 picked up from the seat of the car (Rp. Tr. p. 22) by the
14 Agent.

15 On cross-examination the witness testified that he
16 had been convicted of a felony in the Superior Court of Los
17 Angeles County; he denied the use of heroin but admitted
18 he used a narcotic for five or six years (Rp. Tr. p.25).
19 He knew Meyers for about two years and met the Agents in
20 April of '66. At the time that he met the Agent he was in
21 possession of the narcotic, marijuana (Rp. Tr. p. 27).
22 He stated that a complaint had been filed against him but he
23 never had been taken to court or prosecuted for the charge
24 (Rp. Tr. p. 28). The witness was then asked if he had ever
25 testified in court in connection with any matters involving
26 narcotics, to which he replied "Yes, I have". When asked



1 in what cases or the names of the defendants, the Court
2 interrupted and interposed its own objection on the grounds
3 that the defendant was not entitled to know what cases and
4 refused to permit counsel to elicit the cases in which the
5 witness had testified (Rp. Tr. p. 29). Defense Counsel
6 insisted that the purpose of eliciting the testimony from
7 the witness was to establish his bias and prejudice and the
8 refusal to permit such examination was in effect, a denial
9 of the right of cross-examination. The witness denied that
10 he had been promised anything in connection with his case by
11 any Federal officer (Rp. Tr. p. 32).

12 The witness further testified that he had known Henry
13 Freeman for approximately eight years and identified Freeman
14 as being in the courtroom at the moment. The witness de-
15 nied that he had told Mr. Freeman that he would like to
16 plant some narcotics in Meyers' home. He denied telling
17 Mr. Freeman that he was an addict of narcotics although he
18 admitted that at the time of his transaction with Westrate
19 he was under the influence of marijuana (Rp. Tr. pp. 34-35).
20 He first met Mr. Westrate in June or July of 1966 (Rp. Tr.
21 p. 37). At the time he made the telephone call to defendant
22 Meyers he (the Agent) monitored the telephone call. The
23 defense counsel thereupon moved the court to strike this
24 testimony on the grounds that it was in violation of the
25 Fifth Amendment and the Federal Communications Act, which
26 motion was denied by the Court (Rp. Tr. p. 38).



1 The witness continued to reiterate the story of the
2 transactions on cross-examination, adding that the five
3 hundred he delivered to the defendant he had received from
4 Agent Westrate (Rp. Tr. p. 42). The witness denied receiving
5 any money from Federal agents for expenses or otherwise (Rp.
6 Tr. p. 46). The witness admitted writing and signing a
7 statement for the officers during the transaction (Rp. Tr.
8 p. 47). This statement was shown to defense counsel. The
9 witness denied using heroin or having used heroin with a
10 Henry Freeman (Rp. Tr. p. 48). He denied using pills, his
11 last use of them was in June of 1966. After some considera-
12 ble cross-examination the witness admitted that he had a
13 conversation with narcotic Agent Westrate about calling
14 Meyers and attempting to make a buy (Rp. Tr. p. 55).

15 David Lawrence Westrate called as a witness on be-
16 half of the Government testified that he was a Federal
17 Narcotic Agent and he had been employed as such for the past
18 two and one-half years.

19 At the inception of the witness' testimony the
20 Government moved to dismiss Count Five, which motion was
21 granted. Agent Westrate testified at approximately 6:00 or
22 7:00 p.m. a telephone call was made on September 22, 1966
23 from the office of the Narcotic Bureau in the Federal Build-
24 ing by Mr. B to a Henry Freeman. This conversation was moni-
25 tored by the officer. After the call B was searched for
26 money or narcotics and none found. They then proceeded to

1 the foregoing lot and B's vehicle were searched for money and
2 narcotics; at about 8:00 p.m. the witness was seated in the
3 vehicle of B's at the intersection of Balboa and Saticoy
4 Streets. Defendant Meyers arrived in a '58 Chevrolet.
5 B, the witness, and defendant Meyers met at the rear of
6 Meyers' vehicle. A discussion ensued concerning narcotic traf-
7 fic in the area. An objection was interposed by defense
8 counsel on the grounds that the defendant had not been advised
9 of his constitutional rights or that the witness was a
10 narcotic agent. This objection was overruled. The witness
11 and B told defendant Meyers that they were selling heroin in
12 small amounts and the narcotics they were going to purchase
13 from Meyers they would break up and sell to several people.
14 A further conversation took place about the delivery of the
15 heroin, the witness asked the defendant if he had the heroin
16 with him and he replied that he did not, that it was stashed
17 a few blocks away. When requested to bring the heroin the
18 defendant replied that he wouldn't do that as he did not know
19 the witness, he was leary of him, and wouldn't do it that
20 way (Rp. Tr. p. 60). Meyers said that B could go with him
21 and he would show B where the narcotics were hidden and that
22 he would return for the money. B and Meyers then departed
23 in Meyers' car. Subsequently they returned. The court
24 overruled the defense objection to the conversation between
25 the officer and the defendant on the ground that defendant
26 had not been advised of his constitutional rights (Rp. Tr. 62).



1 After counting out the money the agent "flipped" the three
2 hundred dollars into the back seat of the Meyers' automobile,
3 Meyers refusing to accept the money in his hand (Rp. Tr. p.
4 63).

5 The officer then conducted a field test for heroin
6 and received a positive reaction (Rp. Tr. p. 64). He there-
7 upon searched the witness B and his automobile for any money
8 or narcotics (Rp. Tr. p. 64).

9 After the meeting and the passing of the money B and
10 the officer proceeded in B's car to Napa and Forbes Streets,
11 alighted from the automobile and B pointed out a rubber con-
12 traceptive next to the sidewalk (Rp. Tr. p. 65). The
13 officer identified the contraceptive as Exhibit 1 (Rp. Tr. p.
14 66).

15 On October 3, 1966, the Agent met with B at his home;
16 had a conversation and departed with B (Rp. Tr. pp. 68-69).
17 B made a telephone call to defendant Meyers which was monitor-
18 ed by the Agent (Rp. Tr. p. 69). B told defendant he had
19 five hundred and wanted to buy two ounces of heroin. They
20 agreed to meet at the intersection of Laurel Canyon and Van
21 Nuys Boulevard and B was to call the defendant from that
22 location (Rp. Tr. p. 70). The call was made and Meyers told
23 B in a monitored conversation that he would not sell heroin
24 if the witness was around. Subsequently defendant arrived
25 (Rp. Tr. p. 71). The witness gave B five hundred in Govern-
26 ment funds, the defendant told B to follow him. The witness

1 did not see the defendant Meyers "again that day", but did
2 see B (Rp. Tr. p. 72) when he returned. The witness entered
3 B's car and on the front seat there was a contraceptive with
4 white powder in it which the witness identified as Exhibit 2
5 (Rp. Tr. p. 73). B and his vehicle were again searched
6 by the officers who found no money or narcotics. Both
7 Exhibits 1 and 2 are identified as containing heroin (Rp. Tr.
8 p. 74).

9 On cross-examination the witness testified that he
10 first met B in April of 1966. The witness then testified
11 that he purchased marijuana from the witness B in April of
12 1966 and a month or two later filed a complaint with the
13 United States Attorney's office and the Commissioner (Rp. Tr.
14 p. 75) which had never been brought to a final disposition
15 nor presented to the Federal Grand Jury (Rp. Tr. p. 76).
16 The agent advised B that his cooperation with the Bureau
17 would be made known to the United States Attorney's office
18 for whatever action they deemed necessary and was released
19 on O.R. B has been used in other matters which have
20 resulted in prosecution involving narcotics (Rp. Tr. p. 77).
21 The officer had been advised that B had purchased heroin,
22 pills and marijuana (Rp. Tr. p. 78). When the case was
23 first called for trial the officer admitted that he observed
24 the defendant Meyers and was of the opinion that he was under
25 the influence of a drug (Rp. Tr. p. 82).

26 The Government offered the exhibits in evidence which

1 was objected to for lack of foundation that the defendant
2 was not advised of his constitutional rights. The Govern-
3 ment rested.

4 The defendant moved for a judgment of acquittal on
5 the ground that no proof was brought to show that the pro-
6 duct was imported or that in truth and in fact "that the pro-
7 duct was imported". (Rp. Tr. p. 87)

8
9 DEFENSE

10 At the onset of the presentation of the defense the
11 Government and defendant's counsel stipulated to the testi-
12 mony of Dr. Patrick J. Lavelle who conducted a physical,
13 clinical and chemical test of the defendant on January 5,
14 1966, under Order of the Court, which is summarized as
15 follows:

16 "The lower extremities are normal, the upper
17 extremities show extensive tracks on the
18 bends of both elbows and both forearms. As
19 a matter of fact, both sides show approximate-
20 ly the same picture. There are on each arm
21 two 4" tracks and superimposed on these two
22 4" tracks on each arm are over 20 fresh
23 puncture wounds. Each of these shows various
24 stages of age up to two weeks' time. In
25 other words, there were at least 40 fresh
26 puncture wounds, all estimated to be less



1 than two weeks old and these were superimposed
2 over two 4" trackson the right arm and two 4"
3 tracks on the left arm.

4 Conclusion: It is this examiner's opinion
5 that the patient, at the time of this exami-
6 nation, is an actual narcotic addict and he
7 is in the mild and early stages of narcotic
8 withdrawal. The above conclusion is based
9 on the history the patient gives of using
10 narcotics; the findings of nervousness and
11 the rapid pulse; the dilated pupils which fail
12 to re-act to light; the increased secretions
13 of the nose and the eyes; and the extensive
14 old tracks and 40-plus fresh puncture wounds,
15 all less than two weeks old, superimposed on
16 the tracks of right and left arms. He is under
17 the influence of narcotics at this time.

18 Respectfully submitted,

19 Patrick J. Lavelle, M.D."

20 (Rp. Tr. p. 92, ls. 14 through 13 on p. 93).

21
22 In a supplemental report of laboratory studies,
23 dated January 11, 1967, the doctor reports:

24 "In re: Fred Meyers - Case No. 34CD

25 Superseding Indictment 130CD

26 Following is a supplemental report to that



1 submitted on January 5, 1967:

2 Urinalysis for opiate alkaloids has come
3 back 64.4 mg%. A word of interpretation
4 about this figure:

5 1. It is a high to very high level of
6 opiate alkaloids in the urine.

7 2. It substantiates the findings on
8 clinical examination that the patient was
9 under the influence of narcotics at the time
10 of the examination.

11 Again hoping that this information will
12 prove valuable to the Court and to the
13 patient, I remain --" (Rp. Tr. p. 94,
14 ls. 1 through 16).

15
16 The defendant Fred Patrick Meyers was called as a
17 witness in his own behalf and testified that at the time of
18 the commission of the two sales charged in the Indictment,
19 he was using heroin and had been using it for about two years
20 prior thereto; that he was injecting himself about three or
21 four times a day (Rp. Tr. p. 95) and unable to resist the use
22 of the drug or the request of persons to violate the law;
23 that he made an honest effort to get rid of the habit by
24 consulting doctors and psychiatrists (Rp. Tr. pp. 90-97).
25 He had marks on his arms, demonstrating his use of heroin.

26 The Court thereupon observed and defendant's counsel

1 replied:

2 "THE COURT: Is the prolongation of this in-
3 quiry necessary where there is no doubt but
4 what this defendant is an addict?

5 MR. PARSONS: I don't think so, your Honor.

6 THE COURT: We know how he takes it. The
7 only thing we are concerned with here is
8 whether his addiction is of such a nature as
9 makes it impossible for him to resist the
10 opportunity to sell, as near as I can see.
11 Any inquiry along that line would be helpful.
12 I would think that would be worth a lot.

13 MR. PARSONS: Yes.

14 Q Mr. Meyers, you are charged here with
15 selling heroin. There has been some evidence
16 offered here to that effect that people have
17 made certain requests upon you to sell heroin.
18 Have you been able to yourself resist those
19 solicitations that you violate the law and
20 make such sales?

21 A I don't understand that.

22 MR. PARSONS: May I have that read to him,
23 please?

24 (Question read.)

25 THE WITNESS: No."

26 (Rp. Tr. p. 98, ls. 2 through 23).



1 On cross-examination the defendant testified that
2 he had been previously convicted of grand theft, burglary
3 and failure to pay tax on heroin and that he knew that
4 heroin "has come from Mexico", - that he had made an honest
5 effort to clean himself of his habit but had never submitted
6 himself to a hospital for treatment for narcotic addiction.
7 The following interrogation is of significance:

8 "Q What have you done to make an honest
9 effort to clean yourself as an addict?

10 A I have left the County on several
11 occasions to go up and try cleaning up for
12 periods of time, four days, five days.

13 Q By yourself?

14 A Yes; by myself.

15 Q Where would you go on these occasions?

16 A One time I went up to Santa Cruz. I
17 stayed with my brother up there. I went to Indio
18 one time and stayed down there. And I stayed
19 in Bakersfield one time.

20 Q Did you ever go to a doctor --

21 A I wanted --

22 Q To help you through these periods?

23 A I wanted to. I consulted a doctor and
24 he said it was against the law for a doctor to
25 treat an addict.

26 Q Did you ever try and submit yourself to



1 some private foundations like Synnon or other
2 foundations like that to cure your habit?

3 A No, I haven't.

4 Q Could you state the reason for this, why
5 you haven't?

6 A Well, everybody I know that has come out
7 of the hospital, they're out for short periods
8 of time and they're using again, so I didn't
9 feel that it would do me any good either.

10 Q Did you know why they started using again?

11 A No, I didn't.

12 Q Didn't you think, though, Mr. Meyers,
13 that if you really wanted to clean yourself of
14 this habit that the proper way to do it would
15 have been with medical help?

16 A I tried to get medical help from two
17 different doctors.

18 Q Private doctors of your own choosing?

19 A Yes.

20 Q Did these doctors suggest that you seek
21 help in a hospital for narcotics addiction?

22 A One says the best thing to do is just
23 kick it cold turkey, and I tried that.

24 Q You live in California; is that correct?

25 A Yes, I do.

26 Q Do you know of the provision in California



1 "law that allows an addict to commit himself
2 voluntarily for treatment --

3 A No, I don't.

4 Q -- without criminal sanction?

5 A No, I don't."

6 (Rp. Tr. pp. 101, line 3 through line 25 p. 102).
7

8 Over continued objection that the interrogation was
9 not within the scope of the direct examination, the witness
10 testified that he made no sales on September 22nd and
11 October 3rd to the narcotic officer. However, he admitted
12 finding some \$300 on the back seat on the first occasion
13 (Rp. Tr. pp. 106-109).

14 Leonard Lawrence Meyers testified that he is the
15 brother of Fred Meyers, who is 25 years of age; that he saw
16 the defendant frequently during the past several years (Rp.
17 Tr. p. 110). In describing the defendant's attitude during
18 the past two years he noticed a complete change in person-
19 ality. Where previously he had a likeable personality,
20 easy to get along with, he would now argue, forget things,
21 cuss for no reason at all, and get mad and not talk for
22 days at a time. His general appearance has changed, he
23 was now a lot "skinnier", his face broken out with pimples;
24 his ideas are dead wrong, makes statements about breaking
25 in and stealing to get himself a Color TV or tires and
26 the witness believes that the defendant was unable to dis-

1 tinguish between right and wrong (Rp. Tr. pp. 113-114).

2 On cross-examination the witness testified as to
3 the defendant's further contact with his family.

4 Leonard Meyers called as a witness on behalf of the
5 defendant testified that he is the father of the defendant;
6 that he noticed the defendant's conduct in the past couple
7 of years as compared to his prior conduct (Rp. Tr. pp. 115-
8 116). He noticed a change in the defendant's temperament,
9 that everything seemed to go wrong with him, he would get
10 real hot-headed, mad and angry if anyone tried to tell him
11 something; the people he "chummed" with were altogether
12 different, he became skinny and he was of the opinion that
13 he was not able to resist requests upon him to violate the
14 law. The father stated he was going to have him admitted
15 to a hospital if he didn't change; that the defendant was
16 unable to distinguish between right and wrong (Rp. Tr. p.117)

17 Tess Meyers called as a witness on behalf of the
18 defendant testified that the defendant is her son; that she
19 noticed a change, a marked change, in his conduct and ac-
20 tions during the past two years, that all of a sudden he
21 changed, accusing his mother of doing things against him and
22 picking up things that belonged to him; his personality
23 changed entirely; that after observing him, his conduct
24 and his conversation and treatment of other members of his
25 family that it was her opinion he was not competent to re-
26 sist any request by persons to violate the law or that he



1 was unable to distinguish between right and wrong (Rp. Tr.
2 p. 124). She further testified that she was a nurse, had
3 been employed in the State Hospital in Wisconsin and the
4 Sepulveda Veterans Administration Hospital and had worked
5 for six years in a psychiatric hospital (Rp. Tr. p. 126).
6 She observed her son in a depressed condition and if he
7 hadn't been watched carefully would have committed suicide
8 because he said that he wanted to die and did not want to
9 live (Rp. Tr. p. 126).

10 Henry Clark Freeman testified on behalf of the
11 defendant. He said he knew the witness B for approximately
12 eight years. During the summer of 1966 he had a conversa-
13 tion with B. He told him he "would like to plant some
14 stuff in Mr. Fred Meyers' home". That he had used heroin,
15 marijuana and barbiturates with B. The witness testified
16 that he had not made arrangements on October 16th or 17th
17 to supply Agent Westrate or Mr. B with heroin and on
18 October 17, 1966, did not receive \$300 from Agent Westrate.
19 On an occasion Agent Westrate and B came to his home wanting
20 to score some heroin but the witness told them that he could
21 not get any.

22 The Defense rested.

23 The defendant hereupon made a motion for judgment of
24 acquittal.

25 Dr. Edwin E. McNeil called as a witness on behalf
26 of the Government testified that he specialized in neurology



1 and psychiatry (Rp. Tr. p. 133). On January 5, 1967, he exami-
2 ned the defendant under appointment by the Court and listened
3 to the witness in the courtroom during the trial (Rp. Tr. p.
4 137). It was the doctor's opinion that the defendant was
5 "not presently suffering from a psychosis", was able to
6 understand the proceedings against him and to assist in his
7 own defense; that in his opinion on September 22, 1966 and
8 October 3, 1966 the defendant was not suffering from any
9 mental defect or disorder rendering him incapable of distin-
10 guishing between right and wrong; that he was capable of
11 knowing the nature and quality of his acts; that his will
12 was not destroyed at the time of the commission of the offens-
13 es and that he was capable of controlling his actions in
14 question (Rp. Tr. 137 and 138); that he had the ability to re-
15 frain from committing the acts with which he was charged (Rp.
16 Tr. p. 139).

17 On cross-examination the doctor testified that at
18 the time of the examination of January 5, 1967 the defendant
19 had quite a few marks on his arms, as many as 40 (Rp. Tr. p.
20 139); that the marks indicated injections of heroin and that
21 the defendant at that time was under the influence of narco-
22 tics and showed evidence of withdrawal symptoms. The defend-
23 ant stated to the doctor in the course of the examination
24 that he had used heroin "quite a bit" and that the defendant's
25 statement that he was hooked on heroin seemed consistent with
26 what he had observed (Rp. Tr. p. 141). At the time of the



1 examination the defendant told the doctor that he was suf-
2 fering with a severe headache. The doctor observed that he
3 was perspiring more than normal and that the defendant
4 looked ill to him (Rp. Tr. p. 142); he was restless, com-
5 plained of marked stomach craps. The doctor observed an
6 excessive amount of mucus in his nose and needle marks over
7 the veins in both forearms and many older needle marks. The
8 defendant stated to the doctor he had "fixed" that morning
9 and he was having withdrawal symptoms and needed another
10 "fix". The doctor formed the opinion that he probably was
11 an addict (Rp. Tr. p. 143).

12 The motion for judgment of acquittal was predicated
13 upon the fact that the defendant was so afflicted by the
14 continued use over a long period of time with the narcotic
15 drug heroin that he was unable to determine right from wrong;
16 that using "legal terminology he is insane". (Rp. Tr. p.
17 146)

18 Defense counsel then made the following statement:

19 "... I was going to ask your Honor if you
20 wouldn't withhold the judgment in this case and
21 let us commit this man. He will voluntarily
22 submit to commission to an institution.

23 Now, there is a new law which we discussed
24 here. You gave us time and I have spent some
25 time looking into this. I know Mr. Nasatir
26 has also. There is an act we thought would



1 help him, but there is a provision in there
2 that if he has been convicted before he can't
3 be helped. But that act is not available only
4 for the lack of funds to endorse it. He has
5 got this prior, which he frankly admits, on
6 a tax count. I don't think that would bar
7 him. Maybe it would, but I don't think it would.

8 But in any event, I think this man could
9 be committed to a Government hospital by this
10 Court upon his application.

11 I would, as a practical matter, like to
12 have your Honor take this under submission
13 until we can work this out". (Rp. Tr. p. 147,
14 ls. 1 through 19).

15
16 The Court thereupon made the following observation:

17 "THE COURT: Well, this, of course, is one
18 of those pathetic cases of a defendant who is a
19 pathetic figure and who does need help. Obvious-
20 ly he is an addict. Obviously his will to re-
21 sist the use of narcotics is gone, at least
22 for the time being.

23 But he is charged with sale, and I can't
24 overlook the fact that so far as his will is
25 concerned with respect to the sale it is quite
26 a different thing.



1 "This isn't the type of irresistible impulse
2 that we are talking about when we say a man's
3 will is so destroyed that he does not have the
4 capacity to resist these impulses. I am sorry
5 for the defendant.

6 I think there is within the Federal struc-
7 ture a hospital which can take him and receive
8 him and give him some help. And at the appro-
9 priate time it is my intention to recommend to
10 the Bureau of Prisons that he be placed in a
11 hospital immediately for medical care because
12 he needs it.

13 But that does not do away with the fact
14 that this defendant has been guilty of this
15 offense, a fact which I cannot overlook.

16 The Court, therefore, finds the defendant
17 guilty on Counts 1, 2 and 3 of the Charge.
18 The matter will be referred to the Probation Officer
19 for a presentence report". (Rp.Tr. p. 150, ls.
20 8 through 7 on p. 151).

21 The Court thereupon made the further observation after
22 committing the defendant:

23 "This fellow is a danger to himself at this moment.
24 I think he should be remanded to the custody of
25 the Marshal immediately. The time he served from
26 now on will be credited to his final sentence. I



1 think for his own best interest, as well as
2 society's, he had better be incarcerated im-
3 mediately.

4 MR. PARSONS: Very well.

5 THE COURT: His bond will be exonerated.

6 Court stands adjourned". (Rp. Tr. p. 152,
7 ls. 7-14).
8

9 On April 10th a hearing was conducted at which a
10 certified copy of the judgment and probation order in Case
11 No. 34477, which disclosed that on April 26, 1965 Fred Pat-
12 rick Meyers was convicted and sentenced in San Diego, Califor-
13 nia, for violation of Title 26 United States Code, Sec.
14 2476(a) (Rp. Tr. p. 157)

15 Evidence later disclosed that the record of convic-
16 tion pertained to the defendant. The Court found that the
17 alleged prior for violation of Title 26, Sec. 4724(a) was
18 true (Rp. Tr. p. 171).

19 After sentence was imposed on the defendant a motion
20 was made to set bail on appeal. The Court thereupon observ-
21 ed the following:

22 "THE COURT: I don't think it would be
23 fair to this defendant to subject him to the
24 possibility of failure. And I am afraid he
25 would fail. He is a sick boy. I think he
26 is going to need some help and some forceful



1 help.

2 I don't know that he can yet be aware of the
3 seriousness of his problem. If he is, I don't
4 think he has the capacity to resist it.

5 No, the motion will be denied". (Rp. Tr. p.
6 192, ls. 6-13).

7 The record clearly demonstrates, without doubt,
8 the defendant and appellant's use of, and addiction to,
9 narcotics. The declared policy of the Congress was surely
10 adopted to meet such problems as quite forceably exist in
11 the instant matter. Any other interpretation would negate
12 the purposes and intent of the law.

13
14 THE TRIAL COURT ERRED IN FAILING TO
15 FOLLOW THE DECLARED CONGRESSIONAL
16 POLICY AND THE PROCEDURE PROSCRIBED
IN POST NARCOTIC CONVICTIONS

17 The Narcotic Rehabilitation Act of 1966 enunciates
18 a clear Declaration of Policy:

19 "Sec. 2 - It is the policy of the Con-
20 gress that certain persons charged with or
21 convicted of violating Federal criminal
22 laws, who are determined to be addicted
23 to narcotic drugs, and likely to be re-
24 habilitated through treatment, should,
25 in lieu of prosecution or sentencing be
26 civilly committed for confinement and

1 treatment designed to effect their restora-
2 tion to health, and return to society as
3 useful members.

4 It is the further policy of the Congress
5 that certain persons addicted to narcotic
6 drugs who are not charged with the commis-
7 sion of any offense should be afforded the
8 opportunity, through civil commitment, for
9 treatment in order that they may be rehabilit-
10 ated and returned to society as useful members
11 and in order that society may be protected
12 more effectively from crime and delinquency
13 which result from narcotic addiction".

14 (P.L. 89-792 - 5672).
15

16 It is without dispute in this record that defendant
17 had for a period of approximately some two years prior, and
18 at the time of the trial was, a confirmed narcotic addict.
19 The trial court recognized and confirmed his affliction on
20 several occasions during the course of the trial and at the
21 time of the imposition of the sentence.

22 At the outset of this discussion it is well to note
23 that the court clearly indicated that it was cognizant of
24 the defendant's disease of narcotic addiction when he stated:

25 "He is a sick boy. I think he is going
26 to need some help and some forceful help. I

1 don't know that he can yet be aware of the
2 seriousness of his problem. If he is, I don't
3 think he has the capacity to resist it". (Rp.
4 Tr. p. 192).

5
6 The judgment and commitment imposed sentence of ten
7 years on each of the three counts to run concurrent, with
8 the further provision that "The Court recommends commit-
9 ment to a United States Public Health Hospital facility
10 where the defendant can receive treatment for possible nar-
11 cotic addiction". (Cl. Tr. p. 38).

12 It clearly appears from the record that it was the
13 intention of the Court that the defendant receive treatment
14 for his narcotic addiction problem. The problem that
15 presented to this court is whether the procedure provided in
16 the Narcotic Addict Rehabilitation Act of 1966 was exercised
17 or followed in the instant proceedings. The Act provides
18 an alternative to civil commitment in these cases where an
19 addict was not civilly committed prior to trial and convic-
20 tion. The legislative history further enunciates that
21 "treatment is available to addicts who do not choose civil
22 commitments or were not chosen for it by the Court".

23 U. S. Congressional and Administratives News, 89th Congress,
24 p. 5996 (Legislative History). As the Act provides for
25 different procedure on invocation of those provisions prior
26 to trial and subsequent thereto, and further expressly pro-

hibits an appellant's review relative to civil commitment on appeal, or otherwise under Section 2906 of the Act, which provides as follows:

"Sec. 2906. Absence of offer by the court to a defendant of an election under Section 2902(a) or any determination as to civil commitment, not reviewable on appeal or otherwise.

The failure of a court to offer a defendant an election under Section 2902(a) of this chapter, or a determination relative to civil commitment under this chapter shall not be reviewable on appeal or otherwise".

We shall not dwell on this phase but will limit our discussion to the failure of the Court to follow the post conviction procedure as provided in the Act in the following particulars:

1. To determine if the defendant was an eligible offender as defined in Section 4251(f). This section of the Act provides as follows:

"(f) 'Eligible offender' means any individual who is convicted of an offense against the United States but does not include -

(1) an offender who is convicted of

1 a crime of violence.

- 2 (2) an offender who is convicted of
3 unlawfully importing or selling
4 or conspiring to import or sell
5 a narcotic drug, unless the
6 court determines that such sale
7 was for the primary purpose of
8 enabling the offender to obtain
9 a narcotic drug which he requires
10 for his personal use because of
11 his addiction to such drug.
- 12 (3) an offender against whom there
13 is pending a prior charge of
14 a felony which has not been final-
15 ly determined or who is on pro-
16 bation, or whose sentence
17 following conviction on such
18 a charge, including any time
19 on parole or mandatory release,
20 has not been fully served:
21 Provided, that an offender on
22 probation, parole, or mandatory
23 release shall be included if
24 the authority authorized to re-
25 quire his return to custody
26 consents to his commitment".

1 The strong declaration of policy by Congress
2 indicates the intent of the statute and the desire of
3 Congress to provide for the treatment and rehabilitation of
4 narcotic addicts when they are charged with or convicted
5 of offenses against the United States. The defendant was
6 twenty-five years of age, had been using narcotics for
7 more than two years prior to the alleged offenses. It
8 would appear that he likewise came within the provisions of
9 the Young Adult Offenders section of Title 18, United States
10 Code. The Legislative History contains the following per-
11 tinent observations:

12 U. S. Code, Congressional Administrative News, 89th
13 Congress, pp. 5992 and 5993.

14 "STATEMENT

15 "H.R. 9167 was introduced in accordance with
16 the recommendations of the Department of Justice
17 and the Treasury Department.

18 The enactment of the bill will implement
19 one of the key objectives stated by President
20 Johnson in his 1965 message to the Congress on
21 law enforcement and the administration of jus-
22 tice. In that message the President stated:

23 The return of narcotic and marihuana users
24 to useful, productive lives is of obvious bene-
25 fit to them and to society at large. But at the
26 same time it is essential to assure adequate pro-



1 tection of the general public.

2 The bill was drafted to provide for the rehabi-
3 litation of narcotic addicts and includes pro-
4 visions which will protect the general public.
5 The committee amendments discussed in this
6 report are the result of that consideration and
7 are intended to further implement these basic
8 purposes.

9 The specific provisions of the bill were
10 the result of extended consideration and study
11 by the Department of Justice, Treasury, and
12 Health, Education, and Welfare. H. R. 9167,
13 in providing for the civil commitment of nar-
14 cotic addicts and the alternative of sentenc-
15 ing of addicts to treatment following conviction,
16 creates a new flexibility in the law for deal-
17 ing with the problem of narcotic addiction.
18 These procedures mark a fundamental reorientation
19 toward the problem of addiction. The Attorney
20 General in his testimony before the subcommittee
21 stated that for too long the law had stressed
22 punitive solutions and neglected medical and
23 rehabilitative measures. It also must be re-
24 cognized that the fight against narcotic addic-
25 tion cannot be considered apart from the
26 fight on crime. Narcotic addicts in their



1 desperation to obtain drugs often turn to crime
2 in order to obtain money to feed their addic-
3 tion. Organized crime profits from this
4 situation. On March 9, 1966, in his message
5 on crime and law enforcement, President Johnson
6 expressly noted these facts which he stated:

7 'Drug addiction is a double curse. It
8 saps life from the afflicted, it drives its
9 victims to commit untold crimes to secure the
10 means to support their addiction'.

11 In the same message, the President noted
12 that the existing procedures do not provide
13 the means to deal adequately with the problem
14 of narcotics addiction. He urged enactment
15 of the provisions embodied in this bill in
16 order to meet this need and stated:

17 'But our continued insistence on treating
18 drug addicts, once apprehended, as criminals,
19 is neither humane nor effective. It has
20 neither curtailed addiction nor prevented
21 crime'.

22 * * * * *

23 The committee has carefully considered this
24 legislation and in recommending it finds that
25 it provides the flexibility to enable Federal
26 authorities to treat the unfortunate addict



1 who is capable of rehabilitation to render assis-
2 tance in a manner which will enable him to
3 extricate himself from an otherwise hopeless
4 and repetitious pattern of addiction and crime.
5 The procedures provided by the bill in Title
6 I, II and III, do not essentially change the
7 authority being exercised by the law enforce-
8 ment officials or the courts in dealing with
9 persons charged with criminal offenses or con-
10 victed of such offenses. Rather the bill
11 provides alternatives which provide a needed
12 flexibility in the law. The practical effect
13 of the implementation of the law provided for
14 in the bill, is that strict punishment can be
15 meted out where required to the hardened criminal,
16 while justice can be tempered with judgment and
17 fairness to those cases where it is to the best
18 interest of society and the individual that
19 such a course be followed.

20 The problem of drug addiction involves
21 medical, psychological factors, as well as
22 the aspect of criminality. There are no
23 simple and easily attainable solutions to prob-
24 lems of this complexity . We feel that this
25 bill with the safeguards it contains will
26 provide an effective means for the United



1 States Government to mobilize its resources to
2 aid and rehabilitate that addict who can become
3 a useful and productive citizen. In its
4 efforts to combat narcotic addiction, the medi-
5 cal profession has developed improved methods
6 of treatment, and these continuing efforts have
7 added much to the knowledge concerning the
8 nature and treatment of addicted persons. The
9 testimony presented at the hearings has clearly
10 shown the need for the flexibility approaches
11 provided by civil commitment and post-conviction
12 commitment which would be made possible by
13 this legislation".

14
15 THE COURT ERRED IN FAILING TO
16 DETERMINE THE DEFENDANT'S ELIGI-
17 BILITY FOR TREATMENT AS A NARCOTIC
ADDICT UNDER THE STATUTE IN POST
CONVICTION PROCEEDINGS.

18 The defendant's affliction as an addict is without
19 contradiction. As the charge and conviction in this case
20 involved the sale of narcotics the record failed to disclose
21 whether "such sale was for the primary purpose of enabling
22 the offender to obtain a narcotic drug which he requires
23 for his personal use because of his addiction to such drug".

24 The trial court failed to determine the defendant's
25 eligibility under this basic requirement of the statute. We
26 have to ascertain the "primary purpose" of the sale.



1 The court exercised no discretion in the matter.

2 Bearing in mind the declared Congressional policy
3 it would appear that the purpose and policy of the law was
4 bypassed. It may be well to note, however, that the
5 Court did make its recommendation for "commitment to a
6 United States Public Health Hospital facility where the
7 defendant can receive treatment for possible narcotic
8 addiction". The recommendation, though laudable, has
9 no authority in law. If it was the opinion of the court
10 that the defendant be committed for treatment to a United
11 States Public Health Hospital facility the learned trial
12 judge should have first ascertained the defendant's eligi-
13 bility and upon ascertaining that the offense was committed
14 to enable him to obtain a narcotic drug for his personal
15 use because of his addiction, should then have followed
16 the procedure enunciated under the provisions of Sec.4252 of
17 Title 18 by commitment to the Attorney General for an
18 examination "to determine whether he is an addict and is
19 likely to be rehabilitated through treatment".

20 The section further provides "that the Attorney
21 General shall report to the Court within thirty days or
22 any additional period granted by the court the results
23 of such examination and make any recommendation he deems
24 desirable".

25 Section 4253 of Title 18 provides that following
26 the examination provided for in Section 4252, if the Court



1 determines that an eligible offender is an addict and likely
2 to be rehabilitated through treatment "it shall commit
3 him to the custody of the Attorney General for treatment
4 under this chapter except that no offender shall be committed
5 under this chapter if the Attorney General certifies that ade-
6 quate facilities or personnel for treatment are not avail-
7 able".

8 Thus it appears that upon the trial court ascertain-
9 ing that the defendant is an eligible offender and the
10 certification from the Attorney General the statute becomes
11 mandatory by the use of the words "shall commit" to the
12 custody of the Attorney General "for treatment under this
13 chapter".

14 The statute contemplates:

- 15 1) A determination of eligibility;
- 16 2) Commitment to the Attorney General for examina-
17 tion to determine whether defendant is an addict and likely
18 to be rehabilitated through treatment;
- 19 3) A report to the Court by the Attorney General
20 and;
- 21 4) A commitment to the Attorney General for treat-
22 ment after a determination by the Attorney General of defend-
23 ant's addiction and likelihood for rehabilitation.

24 The legislative history applicable to post convic-
25 tion procedure is clearly enunciated in the following lan-
26 guage taken in part from the United States Code, Congression-

1 al and Administrative News, 89th Congress, p. 5596:

2 "SENTENCING TO COMMITMENT FOR TREATMENT

3 The bill in Title II authorized an indeter-
4 minate sentence for treatment for a period not
5 to exceed 10 years for selected narcotic
6 addicts convicted of any Federal offense.
7 The bill, therefore, provides an alternative
8 to civil commitment in those cases where an
9 addict was not civilly committed prior to
10 trial and conviction. This means that treat-
11 ment is available to addicts who do not
12 choose civil commitment or were not chosen
13 for it by the court. It is also possible
14 that persons who did not complete the civil
15 commitment program successfully can be
16 considered for further treatment.
17 The fact that an individual was unsuccessful
18 in a course of treatment should not be taken
19 as a conclusive indication of subsequent
20 failure. In a statement filed with the com-
21 mittee, Mr. Roland W. Wood of the California
22 Rehabilitation Center quoted Mr. Richard A.
23 McGee, who is the administrator of the Youth
24 Corrections Agency of California, on the com-
25 plexity and difficulties in combating addic-
26 tion. Mr. McGee stated:



1 'If society naively expects today's tech-
2 nique to turn off addiction with a flick of
3 a needle or a single dose of treatment,
4 society is due for disillusionment. Society
5 has to learn that an addict's problems are
6 so varied and so deeply seated that repeated
7 treatment may be necessary before he ulti-
8 mately is free of his addiction'.

9 The maximum 10 year sentence provided in Section
10 4253 of the new chapter which would be added to Title
11 18, allows correctional and medical authorities a
12 desirable flexibility in treating individual addicts.
13 It also should be recognized that it provides a
14 lengthy period of sentence for those recalcitrant
15 offenders who do not respond to treatment.
16 Section 4252 provides for the examination of an
17 eligible offender when a court believes an
18 eligible offender is an addict. The examination
19 is for the purpose of determining whether in
20 fact he is an addict and is likely to be rehabi-
21 litated through treatment. This is different
22 from the procedure under the civil commitment
23 chapter because the offender is not asked to
24 elect. This then is a distinction between the
25 civil commitment procedure and the procedure provid-
26 ed in Title II".



1 * * * * *

2 "The provisions of Title II provide the court
3 with a further alternative. It has already been
4 noted that Title II makes it possible for the
5 court to make treatment available to addicts
6 who were not chosen for civil commitment or did
7 not make the required election. This committee
8 notes that the court will also be able to con-
9 sider those individuals who for one reason or
10 another did not complete the civil commitment
11 program. The provisions contained in Title
12 II provide for sentencing to commitment for
13 treatment, a procedure which may be described
14 as a problem-centered device which will actually
15 provide supervision and control for a much longer
16 period of time than a short-term commitment".
17

18 THIS TRIAL COURT ERRED IN FAILING
19 TO INVOKE THE STATUTORY PROCEDURE
20 UNDER THE 1966 NARCOTIC REHABILI-
TATION ACT

21 Title II of the Narcotic Addiction Statute, Sections
22 4251 and 4255 inclusive, appear to be the provisions appli-
23 cable in the instant matter. The post-conviction procedure
24 of Title II of the Bill is made a part of Title XVIII
25 the Code Title having to do with criminal procedures. The
26 legislative history of this portion of the Act is enlighten-

1 ing, and we quote:

2 "TITLE II

3 Section 4251

4 Subsection (b) is amended in the same
5 manner as parallel section 2901(c) of the
6 civil commitment chapter by insertion of the
7 word 'assault' to clarify the fact that
8 'assault with intent to commit any offense
9 punishable by imprisonment for more than
10 1 year' is included. Similarly the sub-
11 section is amended to include the offense of
12 conspiracy to commit any of the offenses
13 listed therein.

14 Subsection (c) is amended, as is subsection
15 2901(d), to insert the words 'confinement or'
16 to clarify the fact that 'treatment' may
17 include confinement in an institution within
18 the Federal penal system.

19 Subsection (d) is amended, in the same
20 manner as subsection 2901(e), to define
21 'felony' so as to classify Federal offenses
22 in accordance with section 1 of Title 18 and
23 other offenses in accordance with the place
24 the offense was committed.

25 Subsection (f) (2) is amended in a similar
26 manner as is subsection 2901(g) (2) to bar



1 individuals convicted of unlawfully importing
2 or selling or conspiring to import or sell a
3 narcotic drug. Similarly, the word 'primary'
4 in the exception concerning sale to obtain drugs
5 for personal use because of addiction is strick-
6 en and the word 'sole' substituted. Sub-
7 paragraph (5) of the same subsection (f) is
8 amended to change '1965' to '1966' and to add
9 a reference to the District of Columbia Code
10 in the references to civil commitment procedures.

11 Section 4252

12 The language in the third sentence concern-
13 ing certification as to the unavailability of
14 facilities and personnel is stricken to be
15 added in substantially the same form in
16 section 4253.

17 Section 4253

18 Subsection (a) is amended to make it clear
19 that the court is to act following the examina-
20 tion provided for in section 4252. The sub-
21 section is amended so that the power of the
22 court to commit a person to the Attorney General
23 under the chapter is expressly limited by the
24 exception that no one can be so committed
25 when the Attorney General certifies that
26 adequate facilities or personnel for treatment



1 are unavailable.

2 Subsection (b) is amended to clarify the
3 fact that following the examination provided
4 for in section 4252 the court can impose any
5 sentence authorized or required by law should
6 the court determine that an eligible offender
7 is not an addict or an addict not likely to be
8 rehabilitated". (See U. S. Code Congressional
9 and Administrative News, 89th Congress, pp.
10 5991 and 5992).

11
12 Section 4252 provides as follows:

13 "Sec. 4252. Examination.

14 If the court believes that an eligible
15 offender is an addict, it may place him in the
16 custody of the Attorney General for an examina-
17 tion to determine whether he is an addict and
18 is likely to be rehabilitated through treatment.
19 The Attorney General shall report to the court
20 within thirty days; or any additional period
21 granted by the court, the results of such
22 examination and make any recommendations he
23 deems desirable. An offender shall receive
24 full credit toward the service of his sentence
25 for any time spent in custody for an examina-
26 tion". (U. S. Code Congressional and Adminis-



1 trative News, 89th Congress).

2 It would appear therefore that the commitment for
3 examination is discretionary, tempered by the declaration of
4 policy of Congress quoted above. It is the writer's belief
5 and opinion after exhaustive study of the Code, its purpose
6 and policy, that narcotic addicts be exclusively handled by
7 the courts under the provisions of the Narcotic Addict
8 Rehabilitation Act of 1966.

9 We have been unable to determine or establish that
10 any other procedure is applicable. The recommendation by
11 the Court to the Attorney General in the instant proceeding,
12 that the defendant be committed to a public health hospital
13 for treatment for his narcotic addiction is without authority
14 of law and does not accomplish the designed intent of the
15 Court. The Attorney General's authority is likewise maintain-
16 ed by the same narcotic addiction statute.

17 Under Section 4253 after placement of the eligible
18 offender in the custody of the Attorney General for examina-
19 tion and the results of his report communicated to the Court
20 within thirty days, the Court upon ascertaining that the
21 eligible offender is an addict and likely to be rehabilitated
22 through treatment, the Code provides that the court "shall
23 commit him to the custody of the Attorney General for treat-
24 ment". Section 4253 - this portion of the Code is no longer
25 discretionary but its language indicates that it is mandatory.

26 --

--

1 Section 4253(b) provides as follows:

2 "Sec. 4253 - Commitment.

3 (a) Following the examination provided
4 for in section 4252, if the court determines that
5 an eligible offender is an addict and is likely
6 to be rehabilitated through treatment, it shall
7 commit him to the custody of the Attorney General
8 for treatment under this chapter, except that
9 no offender shall be committed under this
10 chapter if the Attorney General certifies that
11 adequate facilities or personnel for treatment
12 are unavailable. Such commitment shall be
13 for an indeterminate period of time not to
14 exceed ten years, but in no event shall it
15 exceed the maximum sentence that could other-
16 wise have been imposed.

17 (b) If, following the examination provided
18 for in section 4252, the court determines that
19 an eligible offender is not an addict, or is
20 an addict not likely to be rehabilitated
21 through treatment, it shall impose such other
22 sentence as may be authorized or required by
23 law".

24 The procedure provided by law requires the Court to
25 invoke the process for narcotic rehabilitation prior to the
26 imposition of sentence. We respectfully contend that the



1 Court did intend that the defendant receive the benefits
2 of the Act for narcotic rehabilitation. However, the
3 adopted procedure did not comply with the statutory author-
4 ity.

5 It is, therefore, respectfully prayed that the
6 case be remanded to the trial court for further proceedings
7 under the Narcotic Rehabilitation Act of 1966.

8
9 Respectfully submitted

10
11 RUSSELL A. PARSONS
12 DAVID C. MARCUS

13 By David C. Marcus

14 David C. Marcus
15 Attorneys for Appellant
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I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

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1 PROOF OF SERVICE BY MAIL
2 1013a and 2015.5 C. C. P.

3 STATE OF CALIFORNIA)
4) ss.
COUNTY OF LOS ANGELES)

5 I, the undersigned, say: I am and was at all times herein
6 mentioned, a citizen of the United States and employed in
7 the County of Los Angeles, over the age of eighteen years
and not a party to the within action or proceeding; that

8 My business address is 215 West Fifth Street, Los Angeles,
9 California 90013, that on October 11, 1967, I served the
10 within APPELLANT'S OPENING BRIEF (Fred Patrick Meyers v.
11 United States of America, Criminal No. 21821) on the follow-
ing named parties by depositing a copy thereof, enclosed
in a sealed envelope with postage thereon fully prepaid,
in the United States Post Office in the City of Los Angeles,
California, addressed to said parties at the addresses as
12 follows:

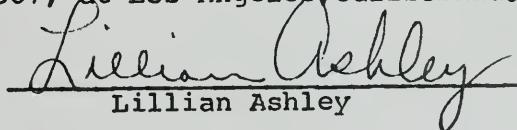
13 United States Attorney
14 Sixth Floor Federal Building
Los Angeles, California 90012

15 Solicitor General of the United States
Washington 17, D. C.

16 United States District Court
17 Federal Building
312 North Spring Street
18 Los Angeles, California
For: Hon. Jesse W. Curtis, Jr.

19
20 I certify and declare under penalty of perjury that the
21 foregoing is true and correct.

22 Executed on October 11, 1967, at Los Angeles, California.

23 
24 Lillian Ashley
25
26

